

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
PG&E CORPORATION AND PACIFIC) Chapter 11
GAS AND ELECTRIC COMPANY)
Reorganized Debtors.) San Francisco, California
) Tuesday, April 12, 2022
) 10:00 AM
)
REORGANIZED DEBTORS'
OBJECTION TO PROOF OF CLAIM
NO. 58562 FILED BY FULCRUM
CREDIT PARTNERS LLC AS
TRANSFeree OF TUSCAN RIDGE
ASSOCIATES, LLC FILED BY PG&E
CORPORATION [11288]

MOTION FOR RELIEF FROM STAY
FILED BY FULCRUM CREDIT
PARTNERS LLC [11066]

CREDITOR TODD GREENBERG'S
MOTION TO AMEND CLAIMS
NUMBERED 77335 AND 76018
FILED BY TODD GREENBERG
[11992]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

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PG&E Corporation and Pacific Gas and Electric Company

SAN FRANCISCO, CALIFORNIA, TUESDAY, APRIL 12, 2022, 10:00 AM

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(Call to order of the Court.)

THE CLERK: Court is now in session, the Honorable Dennis Montali presiding. Calling the matter of PG&E Corporation.

THE COURT: Okay. Morning, Mr. Rupp.

MR. RUPP: Good morning, Your Honor. Thomas Rupp of Keller Benvenuti Kim for the reorganized debtors.

THE COURT: Now, Ms. Parada, you have Ms. Dodge on this phone, right?

THE CLERK: I do not see Ms. Dodge on the attendee list.

THE COURT: Mr. Rupp, what do you know about your opposition (sic) here?

MR. RUPP: Your Honor, I haven't heard anything from Ms. Dodge this morning. I can email her quickly.

THE COURT: Well, how about Mr. Lapping?

THE CLERK: I'll bring him in now, Your Honor.

THE COURT: Yeah, okay. Okay. Mr. Rupp, you can cover it. I mean, what we're doing is talking about scheduling here, right?

MR. RUPP: I believe so. I believe so, Your Honor, but since Ms. Dodge is the primary litigation counsel here, I would like her to be available, if she can join us right now.

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1 THE COURT: Okay. Mr. Lapping, we'll come to you in a
2 minute.

3 Mr. Rupp, the other alternative is I can -- we have
4 another matter on too. I can take that, and let you try to
5 track her down.

6 MR. RUPP: Your Honor, I would prefer that if it's
7 possible.

8 THE COURT: Okay.

9 MR. RUPP: And with my apologies to Mr. Lapping.

10 THE COURT: Mr. Lapping, we're going to have to let
11 you wait a few minutes. It shouldn't be long.

12 MR. LAPPING: That's fine, Your Honor.

13 THE COURT: Okay. So we'll go with the Fulcrum
14 matter.

15 So I guess, Ms. Parada, we should have Ms. Gough,
16 right? And I guess it's Mr. Dreher. Can't keep track of whose
17 in charge of this on what side.

18 Okay. Ms. Stanfield, are you appearing for Fulcrum?

19 MS. STANFIELD: Good morning, Your Honor. Yes. Diane
20 Stanfield of Alston & Bird for Fulcrum Credit Partners.

21 THE COURT: Okay. And Ms. Goodman, are you appearing?

22 MS. GOODMAN: Yes. Good morning, Your Honor. I'm
23 here for PG&E.

24 THE COURT: So --

25 MS. GOODMAN: In lieu of Ms. Gough.

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1 THE COURT: I have an awful lot of issues before me,
2 including scheduling. I have a three-month window, and counsel
3 are tempting me to just, sort of, put it in between.

4 Let me say this. I appreciate the complexity of the
5 matter, and I don't want to make light of it. And I did,
6 indeed, go back and review my notes and the discussions we had
7 some months ago. And I said we would revisit this today,
8 before I issued a formal scheduling order.

9 And sure, we had penciled in a trial of August 1st.
10 Based upon the two different positions that have been
11 expressed, I'm just inclined to move the trial slightly, maybe
12 a month or so. I understand Fulcrum's concern, but I also
13 think that if I move the trial slightly, then counsel can
14 certainly work out their remaining differences on some of these
15 minor things.

16 The one thing that I'm concerned about, Ms. Stanfield,
17 and I suggest to you, but it's not personal to you, it's the
18 schedule that you gave is a little bit awkward in the sense
19 that if somebody has a dispositive motion, your schedule
20 suggested the motion be set on or before June 15th. Well, a
21 motion of this complexity, it would be nice to say I could
22 simply issue a ruling on the spot, but that's awful close to
23 the trial, and I like to have, for something of this complex
24 nature, I'd like to have a little bit of a wider spot between
25 the two. So that's not reason, in and of itself, to delay the

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1 trial, but my instincts tell me to put the trial on in
2 September, and let both sides work out the details.

3 Make one other comment. I don't remember whether we
4 talked about it when we met on December 1st, but at least for
5 now, we are still not scheduling live in-courtroom trials. So
6 I'm assuming that we're going to be doing this by Zoom, and
7 that has its advantages and disadvantages. But with this crazy
8 variant popping around, and people with double boosters getting
9 infected, I'm not inclined to open up the courtroom yet.

10 So why don't we say this, and then I'll shut up and
11 let you all speak. My instincts and inclinations are to put
12 the trial out in the second or so week of September, at least a
13 three-day trial, and issue a scheduling order that will reflect
14 what I hope counsel on both sides can agree on, the steps to
15 get there with deadlines as an accommodation or a compromise of
16 the dates you've discussed, and indeed, have yet another pre-
17 trial conference to see how we're coming along.

18 So with that, Ms. Stanfield, why don't you respond
19 first?

20 MS. STANFIELD: Thank you, Your Honor. Well, overall,
21 I think that's probably the rational approach. You know, six
22 weeks is not going to make the difference in the universe. Our
23 concern, really, Your Honor, is just that we have a date and
24 that we stick to it this time, that everybody agrees that we
25 need to get this portion of the proceedings done, so that we

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1 can move on to the damages phase. So I think the second week
2 of September is probably a good place to land.

3 In terms of the dispositive motions, we just put in a
4 last date to file, not the date to file. And so I'm happy to
5 have an earlier one. We know what our motion is going to look
6 like. I think the defendants or the parties objecting to the
7 claim, their job is to make this look more complicated,
8 obviously. I'd be doing the same in their shoes. Their job is
9 to try to tell you that it's too complicated for a motion for
10 summary judgment, but frankly, we think that it's a fairly
11 straightforward claim. So whatever date is set for dispositive
12 motions will work for us.

13 THE COURT: Oh, so I misspoke. I read your stip, and
14 then I misspoke. You said file. Of course, file means would
15 be heard a month after that. So that's when it's right up
16 against the trial. And frankly, if you're going to win on
17 summary judgment, you shouldn't be preparing for trial.

18 MS. STANFIELD: Right. Right.

19 THE COURT: Ms. Goodman?

20 MS. GOODMAN: Hi. So a couple of issues.
21 Preliminarily is we have several trials scheduled, and that's
22 why we proposed the October 31st date. There is a trial August
23 16th that's specially set, and then we've got a trial that's
24 probably a four-week trial on September 12th.

25 THE COURT: Whose we? Are you talking about you and

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1 your colleagues?

2 MS. GOODMAN: Me and my colleague Gayle. Yeah.

3 THE COURT: Okay.

4 MS. GOODMAN: Who are also handling this. So that's
5 just a timing issue with the trial dates. There's another
6 trial set for October 3rd.

7 The problem -- I shouldn't say the problem. I think
8 we spelled out pretty well in our paper what the issue has
9 been, which is here we are at this point, and we don't have any
10 documents. It's a very document intensive case. And I do not
11 wish to argue the merits or all of our defenses, but the truth
12 of the matter is that most of the information necessary for our
13 defense is in the possession of Tuscan Ridge and third-party
14 contractors. And so we've tried to be diligent with getting
15 subpoenas out. There's still some issues with that. We don't
16 know -- I have an idea of who we're going to depose but won't
17 know till we finish the document review, et cetera.

18 So PG&E, like I put in the papers, is glad to do this
19 on an expedited basis, but it's got to be reasonable. And we
20 put together what we thought was a reasonable schedule, and
21 glad to discuss some of that further, but it's not a case where
22 I can take all the depositions in this case, preparing for
23 other trials and everything else, in two weeks or three weeks.

24 THE COURT: Well, I mean, and I don't want to get into
25 a discussion about details about privilege logs and --

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1 MS. GOODMAN: Right.

2 THE COURT: -- this and completion of that. I mean,
3 to me, it's give the trial date and stick with it. I don't
4 recall, I mean, if you personally have a schedule, and you're
5 the principal trial lawyer, I'll try to accommodate you. But
6 if you're not the principal trial lawyer, or you don't have a
7 conflict, then we fit it in.

8 I mean, let's switch. What do you think would be the
9 trial time, whether it's in October or August? What's the
10 trial time?

11 MS. GOODMAN: How many days?

12 THE COURT: Yes.

13 MS. GOODMAN: Probably four days.

14 THE COURT: Okay.

15 MS. GOODMAN: Four to five days.

16 THE COURT: All right. So is there a four-day period
17 in September that you can handle? And you got to give me a
18 straight answer, not tell me how difficult it is. You got to
19 tell me if you're -- you're the principal trial lawyer, right?
20 Or not?

21 MS. GOODMAN: I will be.

22 THE COURT: Yes.

23 MS. GOODMAN: Gayle and I are the --

24 THE COURT: You're going to first chair in the trial?

25 MS. GOODMAN: I will be first or second chair with

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1 Gayle Gough.

2 THE COURT: Okay. Okay. So do you know her schedule?

3 MS. GOODMAN: I do, and I just -- that's what I was
4 telling you about the other trials that we have going on.

5 THE COURT: Well, again, I say, I can't keep track of
6 all you're doing. I mean --

7 MS. GOODMAN: It's fine, Your Honor. I just don't --
8 I don't see a time to do the trial anytime during September
9 with the September 12th specially set trial.

10 THE COURT: And how long is that trial set for?

11 MS. GOODMAN: Four weeks.

12 THE COURT: Okay. Well, you know, they make a strong
13 argument for August.

14 MS. GOODMAN: And I'm not trying to push the schedule.
15 I'm not trying to push it longer than I need to. We need time
16 to finish our discovery, so that we can get this matter to you
17 and get it decided.

18 THE COURT: But the stipulation -- or not the
19 stipulation. Excuse me. The status conference statement that
20 you filed didn't say anything about conflicting trial. I mean,
21 again, I try to accommodate --

22 MS. GOODMAN: It did at the bottom of footnote 4.

23 THE COURT: Who read footnotes, right?

24 MS. GOODMAN: Right. No, I wouldn't have expected
25 that.

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1 THE COURT: Well, you know, you put your real
2 arguments in your footnote, right? Good old trial technique.
3 Yes, it is in the footnote. I agree with you.

4 Well, wait. You say the October 3rd trial is two to
5 three weeks, You're telling me the September 12th trial is
6 four weeks?

7 MS. GOODMAN: That's what we're anticipating. I mean,
8 obviously we can't start the October 3rd trial till the
9 September 12th trial is over, but that's what -- it's a
10 coordinated case.

11 THE COURT: Yes, but what if I took the week prior?
12 Again, I understand what you want, but I can't just put this
13 whole thing on hold. I'm not inclined to do that.

14 If Ms. Stanfield or Tuscan and Fulcrum are responsible
15 for slowing the thing down, because they're not responding to
16 the document request, that's something else again. Is that
17 what you're saying, or not?

18 MS. GOODMAN: I'm not going to blame anyone here, but
19 I will say I don't have a document yet. And we're all the way
20 into this, and I can't do my discovery without at least
21 preliminarily having the documents, reviewing the documents,
22 taking depositions, noticing depositions. For the PMK
23 depositions, as you know, under the Federal Rules I have to
24 meet and confer with each witness, whether it's a third-party
25 or someone else.

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1 They've identified twenty-one witnesses in their
2 interrogatory responses. Five of them are Tuscan Ridge
3 members. We'll need to take a PMK deposition of Tuscan Ridge.
4 It's much more we need a sufficient amount of time to do the
5 discovery.

6 THE COURT: Well, it's also April, and so there's half
7 of April and May and June and July and August. That's a lot of
8 time. Let me ask Ms. Parada.

9 Ms. Parada, do we have a three-day segment in the week
10 prior to September 12th, the prior week?

11 THE CLERK: Your Honor, we can do September 6th, 7th,
12 and 8th.

13 THE COURT: Yeah. We can juggle Chapter 13.

14 Well, Ms. Goodman, I think I'm going to stick with
15 that. I understand that's an imposition on you, but I mean, I
16 just -- I don't --

17 MS. GOODMAN: Okay. Your Honor, I would like to
18 request that we have a further status conference after we see
19 the documents. It may be fine. I mean, there may not be
20 issues. I just don't know what I don't know yet. And I --

21 THE COURT: No, that's fair. --

22 MS. GOODMAN: -- the documents.

23 THE COURT: That's fair enough. But what I'm --

24 MS. GOODMAN: So --

25 THE COURT: What I'm inclined to -- prepared to do is

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1 just -- is to say we'll schedule a three-day trial, and I can
2 always bifurcate and split the trial off. And again, Zoom
3 offers a lot of flexibility that doesn't exist in the real
4 world.

5 And Ms. Stanfield, are those dates okay for you, or
6 are in a trial somewhere else then?

7 MS. STANFIELD: No. We will make those dates work,
8 Your Honor. This is my priority.

9 THE COURT: Mr. Dreher, you didn't weigh in. Did you
10 have a position on this?

11 MR. DREHER: I do think, Your Honor, because I will be
12 at the counsel table at trial, those dates work for us. I
13 think, Your Honor, that's a fair compromise.

14 I was just going to say, I mean, a lot of us are
15 double set for trials. Things change. Most trials don't go.
16 Some do, some don't.

17 Your Honor's kind of proposed compromise on the
18 proposed schedules is fine with us, and I would just suggest,
19 subject to comment of others, that as far as the actual, kind
20 of, x'd in deadlines, I think we're happy to discuss those with
21 PG&E and kind of work those out, as long as we have a trial
22 date. So once we have a trial date, we can backstop all that
23 in, and I think we'll all be reasonable in that regard.

24 And then finally, Your Honor, with respect to PG&E's
25 request for a further status conference, of course we don't

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1 have any objection.

2 UNIDENTIFIED SPEAKER: Your Honor.

3 THE COURT: I'm not jammed up these days. If I didn't
4 have what's still left with PG&E, I don't know what I'd be
5 doing. Now, my staff will tell you that I'm keeping them all
6 very busy. But what I'm saying is I have some flexibility. I
7 do not have a four-week trial lined up like you do. And I can
8 move these dates if I have to. But I, in turn, recognize that
9 you might be moving some of your things and your other matters
10 around. So I think I'll stick with what I went with. I can't
11 please both sides.

12 But I will move the trial to September 6, 7, and 8. I
13 will defer a few days to issue an actual trial scheduling
14 order. I mean, I've, like every other trial judge, I've
15 modified my trial scheduling order to real in the COVID Zoom
16 era. And I would like you and your opposing counsel to see if
17 you can put your heads together and agree to all the dates that
18 need to get reflected in there, consistent with the two
19 statements you filed. And if you can't agree, I'll just pick
20 the date. But I'd rather let you all do that and be flexible.

21 Again, I'm not trying to punish anybody. But what I
22 do want to do, and my courtroom deputy or judicial assistant
23 will send you a draft trial scheduling order to just give some
24 comments on, but I'll wait a few days. So what I'm going to do
25 is this. I'm going to, I mean, I urge principal counsel to

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1 meet and confer to see if they can come to an agreement on all
2 the dates that are reflected in what we're saying -- what
3 you've set forth in your two respective statements, I will
4 tentatively schedule. Or not tentatively. I will, in fact,
5 set another status conference, just to see where we are,
6 roughly a month from now.

7 So Mr. Rupp, you're there with your mic off. You're
8 the keeper of the PG&E master calendar more than -- as much as
9 my courtroom deputy. When do we have a PG&E calendar a month
10 out?

11 MS. STANFIELD: I believe that would be May 10th, Your
12 Honor.

13 THE COURT: Okay. Why don't I continue -- why don't I
14 then say we'll have another scheduling conference on May 10th
15 at 10 a.m. via Zoom to talk about what we're doing, but
16 hopefully we'll have these dates pinned down, and I'll have
17 issued a trial scheduling order by then.

18 Okay? Everybody can live with that?

19 MS. GOODMAN: Yes, Your Honor. There's only one last
20 request. Is it possible to provide you with our proposed
21 schedule, and see if we can work it out, and if there's issues,
22 to address them at the upcoming status conference? I just
23 don't see -- enough time is my problem. I'm glad to look at
24 everything again. But I looked at these dates, and it's okay.
25 Thirty dates from this, fifteen days, and it doesn't back out

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1 so that it works. I will do whatever I can to try to get
2 everything more compressed, but it also has to be realistic.

3 THE COURT: Well, I mean, I'll answer your question by
4 saying you, without my involvement, and both sides filed
5 statements that had a three-month gap, and all I had to do is
6 close the gap, and I closed the gap slightly on the Fulcrum
7 side in terms of timing for the trial, and to the extent that
8 counsel can't agree on all the other deadlines, I guess I'll
9 just use my Solomon-like judgment and fill in the gaps, if
10 necessary.

11 But you are all experienced lawyers. You know how to
12 do it better than I do, so let's hope you can. But I will just
13 check in with both sides on the 10th to see if we're on track,
14 and if there's anything that I have to decide, I'll use the
15 same approach I did today and decide it.

16 MS. GOODMAN: Okay. Thank you for your time.

17 THE COURT: Thank you all for your time.

18 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

19 THE COURT: Happy Easter or whatever you're
20 celebrating.

21 MS. GOODMAN: Yes.

22 THE COURT: Thank you very much.

23 Okay. Ms. Kim, are you up for this?

24 MS. KIM: No. I was actually, Your Honor, I'm up for
25 the -- or attending for the Tuscan Ridge portion. I think Mr.

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1 Rupp and I are supposed to switch for this portion of it.

2 THE COURT: Well, Ms. Dodge just joined us, I think,
3 and Mr. Lapping, so let's get Mr. Rupp back.

4 And Ms. Kim, you're welcome to stay or you can sign
5 off.

6 MS. KIM: Thank you, Your Honor.

7 THE COURT: Okay. Ms. Dodge, would you state your
8 appearance, please?

9 MS. DODGE: Yes. Jennifer Dodge on behalf of the
10 reorganized debtors.

11 THE COURT: Okay.

12 MS. DODGE: I'm trying to start my video, having
13 issues.

14 THE COURT: I don't know if Mr. --

15 MS. DODGE: All right. I --

16 THE COURT: Okay. Maybe Mr. Rupp isn't coming back
17 in.

18 Okay. Mr. Lapping, you were patient. Can you turn
19 your mic on? Okay. Just state your appearance.

20 MR. LAPPING: Yes. Good morning, Your Honor. Richard
21 Lapping for Todd Greenberg.

22 THE COURT: So here's the question I have for you, Ms.
23 Dodge. Why does there have to be a big timeout while you file
24 your motion to modify the plan? Why can't there just be a
25 stipulation that the matter goes forward? I mean, this doesn't

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1 implicate the rest of the PG&E bankruptcy. It seems like a
2 waste of time to file a motion to do what you want to do.

3 MS. DODGE: Is Mr. Rupp coming back on, because my
4 understanding is we were both going to participate in the
5 hearing. And I apologize for earlier, Your Honor. I was
6 having technical issues --

7 THE COURT: That's all right.

8 MS. DODGE: -- getting on for the hearing.

9 THE COURT: Well, Ms. Kim, can you pinch hit here, if
10 we can't?

11 MS. KIM: Sure. I'll do that. I think Mr. Rupp had
12 connection issues that he is trying to fix, so --

13 But Your Honor, and maybe I'm not understanding the
14 question. Is it that why do things have to stop while our
15 motion to modify the plan injunction goes forward?

16 THE COURT: Well, the question is --

17 MS. KIM: Or is it --

18 THE COURT: The question is why do you have to have a
19 motion to modify the plan injunction? Why can't PG&E and Mr.
20 Greenberg just stipulate that notwithstanding whatever the plan
21 says, this matter can proceed. I mean --

22 MS. KIM: Your Honor, we would have loved to have
23 stipulated with Mr. Lapping and with Mr. Greenberg, but Mr.
24 Greenberg would not permit -- would not agree to allow us to be
25 part of that state court hearing in Marin.

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1 THE COURT: No, I understand that. But my point is
2 that -- and maybe the state court judge will say you can't --
3 but why does it have to implicate the bankruptcy case? In
4 other words, this, again, is one of those cases, one of these
5 disputes that has nothing to do with the fires that drove PG&E
6 in bankruptcy. So if there were no bankruptcy case, there
7 would be this litigation, and the matter would play itself out.

8 So we're now two-and-a-half years after the
9 bankruptcy, and a year-and-a-half after the plan got confirmed.
10 Why does it -- why can't there just be -- why do I, wearing my
11 bankruptcy judge presiding over the main case hat, have to
12 waste my time to set the stage for a place for Mr. Greenberg to
13 iron out his differences with PG&E.

14 Mr. Lapping, can you explain why?

15 MS. DODGE: Well, I'd like -- and I'm sorry. I don't
16 mean to jump in, but I just wanted to explain that I spoke
17 briefly with Mr. Lapping over the weekend, Your Honor, and the
18 reason that we -- we were not aware of the state court action
19 until right before the last hearing we had --

20 THE COURT: Right. That's right.

21 MS. DODGE: -- weeks ago.

22 THE COURT: I understand.

23 MS. DODGE: And that state court action, the
24 defendants are four contractors. I'm not sure who the one is.
25 I don't know if he's a contractor --

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1 THE COURT: It doesn't matter. I saw their names.

2 MS. DODGE: Right. But basically the allegations, and
3 we attached the complaint as an exhibit to our status
4 conference statement yesterday. I'm not sure if you had a
5 chance to look at that or not.

6 THE COURT: I did. I did.

7 MS. DODGE: But basically, the allegations in that
8 state court complaint are identical to the allegations against
9 PG&E in the --

10 THE COURT: No. Ms. Dodge, let me cut you off. I
11 know that. I got it.

12 MS. DODGE: Right. So it just --

13 THE COURT: My question is, if there were no
14 bankruptcy, PG&E would move to intervene, and then the state
15 court would grant or deny it.

16 MS. DODGE: Right. Right. And that's what -- what
17 we'd like to do is we'd like to have everybody present and have
18 one forum.

19 THE COURT: I got it.

20 MS. DODGE: Right.

21 THE COURT: I got it.

22 MS. DODGE: Okay.

23 THE COURT: So why not just --

24 MS. DODGE: So I'm not understanding the question.

25 THE COURT: Okay. Mr. Lapping, are you going to hang

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1 up here? Are you -- is your call --

2 MR. LAPPING: Yes, Your Honor. I'm sure, with the
3 hang up -- basically, my view of it is we have a proof of claim
4 that we filed, and we have a process underway with a trial
5 date, which may slip a little bit, but we're not inclined to
6 give up our speedy trial here in bankruptcy just because
7 there's another state court action that PG&E is interested in
8 defending or --

9 THE COURT: Well, the reason why they're interested in
10 defending it is because your client brought it, and it
11 implicates the very same property and the very same location
12 for all three of the disputes, and two of which are framed in
13 these claim objections, so. And as I recall, these events
14 happened only six years ago, right? At least --

15 MS. DODGE: Not quite that long ago. I think it's
16 about --

17 THE COURT: Okay.

18 MS. DODGE: -- four years. But I mean, the one --

19 THE COURT: So --

20 MS. DODGE: -- one claim that is not implicated in the
21 state court proceeding is the refrigerator claim.

22 THE COURT: No, I understand.

23 MS. DODGE: And we would --

24 THE COURT: I understand.

25 MS. DODGE: Right. And we would be willing to, you

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1 know, I guess, we'd like -- we'd prefer that everything be held
2 in abeyance until a decision's made on our motion to modify the
3 plan injunction to try to get those other two --

4 THE COURT: No. Ms. Dodge. Ms. Dodge, I'm trying to
5 cut you off. I'm trying to cut you off. I can modify the plan
6 injunction during this hearing.

7 The injunction is modified. No, seriously, this is
8 just -- talk about getting bogged down on something that has
9 nothing to do with the merits. It seems to me that the
10 superior court --

11 I mean, Mr. Greenberg, yes, he filed three proofs of
12 claim, and there was no litigation elsewhere, and PG&E has
13 defended those three proofs of claim. Mr. Greenberg has then
14 chosen to sue some other people in connection with the very
15 same events that are the locus of two of those proofs of claim.
16 So there's no judicial efficiency in making PG&E defend against
17 Mr. Greenberg here on two of those claims and at the same time
18 be brought in as a third-party defendant or someone for whom
19 the contractors will undoubtedly seek indemnity in another
20 court. And that is the height of inefficiency.

21 So one thing to do would be to say take Mr. Greenberg
22 and his two claims, and they can fight it out in the superior
23 court. Now, I understand that's an imposition on Mr.
24 Greenberg, but he's the one that brought the suit. (Audio
25 interference) on PG&E to fight two suits in two different

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1 courts on one set of facts. So I'm prepared, if I have to, to
2 have the case about the refrigerator.

3 And Ms. Dodge, I don't quite understand why you want
4 to defer the refrigerator fight while these other fights get
5 worked out, but that's a --

6 MS. DODGE: Right. What I was starting to say is that
7 with regard to the refrigerator claim, because it has nothing
8 to do with the state court action, we're willing to go forward
9 on that claim on the date that we have set. I mean, it's June
10 27th to 28th. It's not going to take two days. It would take,
11 at most, one day. And if we want to go forward on that on that
12 date, then that's fine with PG&E. But would you --

13 THE COURT: Mr. Lapping, why is he fishing? Why is it
14 a good thing for your client to fight the battle in two
15 different courts, when you know darn well that PG&E is
16 implicated, unless Mr. Greenberg would like to indemnify PG&E
17 and say they don't have to join us in court, because he'll
18 indemnify them for any claims that otherwise be asserted
19 against PG&E, which I don't think would be in your client's
20 best interests.

21 MS. DODGE: I like that idea.

22 MR. LAPPING: Your Honor, what I would think would be
23 one option here is for Mr. Greenberg to move the state court to
24 stay that action until we resolve this one, this proof of
25 claim, and that may make the state court action superfluous or

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1 not, but they don't need to be going simultaneously.

2 We can proceed in this court with the current schedule
3 or a modification of it, and then leave the activity in the
4 state court to simply on hold until this aspect is resolved,
5 and then that will inform the parties as to whether or not it
6 makes sense to go forward any further in the state court.

7 THE COURT: That seems equally inefficient, because
8 PG&E might want to have a claim over against the parties that
9 they believe -- PG&E believes have caused the problem. So
10 again, if Mr. Greenberg would like to indemnify PG&E and hold
11 them harmless, that's fine.

12 But think about it. Come on. This is a construction
13 thing, a tree removal problem. You know darn well that
14 everybody sues everybody. And what you're saying is, well, let
15 me see if I can win from PG&E. Maybe I won't bother suing the
16 other people. Well, PG&E might bother suing the other people.
17 So it's equally efficient for me to simply abstain from this
18 dispute and say go fight it out in the state court on these.

19 MS. DODGE: Now, the other issue, Your Honor, is that
20 Mr. Greenberg has different counsel in the state court action
21 than he does in the bankruptcy action, and I don't know the
22 extent to which Mr. Lapping has coordinated with them or spoken
23 with them about this issue.

24 THE COURT: Well, I understand. And Mr. Lapping is a
25 bankruptcy expert and an experienced one, and I'm not going to

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1 criticize his fellow other counsel. I'm just saying that from
2 a 35,000 foot point of view, it is inefficient to implicate two
3 judicial officers, two court systems, four sets of lawyers, for
4 the same dispute.

5 It's all about one tree and one driveway thing. It's
6 too bad I can't blame somebody on the refrigeration problem and
7 send that somewhere too. But let's go back to the bankruptcy
8 question. And this, whether Ms. Kim or Mr. Ruff wants to
9 answer this, to waste time with a motion to modify the plan so
10 PG&E can defend a claim in the state court is a complete waste
11 of time.

12 So Ms. Kim, why don't I just issue an order that says
13 that Mr. Greenberg and PG&E don't have to worry about the
14 automatic stay while they iron out all of their differences in
15 connection with these two disputes?

16 MS. KIM: Your Honor, in keeping with the theme of
17 these past few minutes, I think that would be efficient, and I
18 don't believe that we'd have any issue with that, and then be
19 able to proceed on the refrigerator claim on the schedule that
20 it is right now. That seems to me -- we had thought we would
21 have to -- because we were not going to be able to stipulate
22 with Mr. Lapping -- that we'd have to bring a motion to get
23 that relief. But if Your Honor is inclined to abstain and
24 modify the plan injunction so we can intervene in the other
25 action, that would be great.

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1 THE COURT: Well, I don't want to sandbag Mr. Lapping
2 in the course of the hearing that he's been waiting and then
3 say here, I'm going to do all these things, without giving him
4 a chance to reflect on it.

5 But Mr. Lapping, from the efficiency point of view it
6 just makes no sense. So maybe you need to talk to your client
7 and have a come-to-Jesus meeting with him on the subject, and
8 we can schedule the refrigeration trial then. So what do you
9 suggest? Mr. Lapping, what's your suggestion?

10 MR. LAPPING: I would like a chance to confer with my
11 client and his counsel in state court. I think that the
12 problem that he perceived was that there were potential
13 statutes of limitations that could have expired and needed to
14 be addressed by filing the action. I don't think he wants to
15 get in state court and have a lengthy delay, but if that's what
16 has to happen, then that's what has to happen.

17 THE COURT: Well, first of all, I'm not --

18 MR. LAPPING: But I don't think --

19 THE COURT: I'm not faulting him for protecting his
20 statute of limitations against third parties, and if there were
21 a way to insulate PG&E from the ramifications of what happens,
22 that's fine, but there is no way to do that. And so when Mr.
23 Greenberg chooses to sue one company in one forum and other
24 people in another forum over the same operative facts, to me
25 the result is -- it cries out for judicial efficiency, so --

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1 and there's no way to bring the third-party defendants into the
2 bankruptcy court.

3 MR. LAPPING: Well, it has always been the case that
4 the way this claim was alleged, that there were these
5 subcontractors involved in the case, and at all times PG&E had
6 the ability, if it becomes liable to Mr. Greenberg, to bring a
7 contribution or other claim against these parties. The statute
8 only begins to run once the claim has been adjudicated here.
9 And so it has always been the case that PG&E could, down the
10 road, sue Teichert and whoever and blame them for any judgment
11 or amount that they have to pay.

12 And I would say it equally makes sense to just stay
13 the state court and get to this conclusion, and if it turns out
14 PG&E has no liability, then it's simply the state court action
15 will be revved up, I suppose, but PG&E won't be in it.

16 THE COURT: Well, you say it won't be in it, but how
17 do you know it won't be in it? I mean, you're saying that and
18 he could have brought these other people in. Well, Mr.
19 Greenberg could have sued those other people earlier, too.
20 Again, I'm not faulting him, but I'm not here to fault PG&E.
21 PG&E had no need to bring those other people in, because
22 Greenberg didn't sue them, right? Mr. Greenberg could have
23 gone and sued and sought relief from stay or something, and the
24 stay isn't implicated here.

25 So again, let me put it this way, Mr. Lapping. If you

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1 think PG&E could have simplified this, the answer is so could
2 Mr. Greenberg. He could have sued those other defendants four
3 years ago. And he didn't. And he's not to be blamed for it,
4 and I'm not blaming him for it. But I'm not going to make him
5 or PG&E try twice what should be tried once. And because it
6 can't be tried in this court as against those third parties,
7 the option is the alternative. It's that simple.

8 So look. Mr. Lapping, I'm tentatively going to tell
9 Ms. Kim to upload an order that modifies the stay so that the
10 Greenberg/PG&E dispute that is reflected in the state court
11 litigation can go forward. I'm going to give you a week to
12 reflect on it and be heard. If you think it's inappropriate,
13 or you and your client and your cocounsel have an opportunity
14 to think about it, because I'm not going to just ignore a
15 bankruptcy procedure, but I'm not going to insist on following
16 that procedure when it doesn't serve any useful purpose.

17 So you have until April 20th to just notify me through
18 something, and file just a simple objection to the way we want
19 to proceed, and if there's no objection by the 20th, I will ask
20 Ms. Kim or Mr. Rupp to submit an agreed order, so that the
21 state court can get the clear signal that it can adjudicate all
22 the matters that are before it in whatever forum that it shows
23 up.

24 And meanwhile, I will go ahead and schedule the trial
25 on the refrigeration issue, although, again, that's a discrete

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1 matter.

2 MR. LAPPING: Your Honor, is it your ruling that
3 you're going to abstain from the other two claims?

4 THE COURT: Well, I hadn't really thought about it. I
5 mean, as I say, remember, two weeks ago Ms. Dodge said, I just
6 learned about this. We'd like to have time. I said, okay, so
7 we put the hearing over to today.

8 So in the last couple of days before today's hearing,
9 I learned your client's position and the company's position.
10 And then I heard about this other motion. I mean, these are
11 fast moving sets of events. So the abstention was just the way
12 I was thinking about it. I'm not trying to think things
13 through all at once. I'm trying to think of a practical
14 solution. But practically speaking, I guess that's it.

15 I have the authority, when I'm presented with two of
16 these claims that are framed up and at issue, I have the
17 authority to abstain because of a reason that I'm stating, and
18 the reason I'm stating is it doesn't promote judicial
19 efficiency, and it doubles the transaction or the litigation
20 costs for at least PG&E, and actually, probably, for Mr.
21 Greenberg also.

22 But I'm not -- so that's the thinking of it. Yes, I
23 guess that's a long way of saying that seems like the proper
24 legal solution is to use my discretion to abstain, because
25 there is a more efficient way to adjudicate the rights of the

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1 parties relating to these two disputes.

2 MR. LAPPING: Your Honor, I assume that's conditional
3 on PG&E actually intervening successfully in the state court
4 action, because, obviously, if they don't, I mean, I don't want
5 to be in a position where they don't do anything, and I don't
6 have my claim anymore.

7 THE COURT: Well, if I grant -- and of course not.
8 And if I grant relief from stay, I assume that you'll proceed
9 in the state court, and if Ms. Dodge never shows up, you should
10 go ahead and prosecute that case and whatever. If PG&E moves
11 to intervene, and you oppose them, well, don't come back and
12 ask for help from me. I know that -- that would --

13 MR. LAPPING: I take your hint, Your Honor.

14 THE COURT: No, but Mr. Lapping I'm not trying to play
15 games with your client either. If the state court says I'm
16 going to abstain, I won't hear this case, then Mr. Greenberg
17 should have access to this forum. I don't know how that would
18 come to be. I haven't thought about it. But no, I am not
19 locking Mr. Greenberg out of the bankruptcy court on two of his
20 claims if he makes a good faith attempt to adjudicate his
21 rights in the other court. So this is another way of saying to
22 Ms. Dodge, make sure you get on with it in that state court
23 action, and if you don't, then you're going to be defending Mr.
24 Greenberg right here.

25 MR. LAPPING: So I take it, Your Honor, the order you

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1 issue would also allow us to amend the complaint in state court
2 to add PG&E, I guess.

3 THE COURT: Well, I don't, I mean, I just declared
4 that the stay isn't implicated. In other words, you and Ms.
5 Kim or Mr. Rupp work out the language, and the language, in
6 layperson's terms, is the PG&E bankruptcy doesn't stand in the
7 way of Mr. Greenberg asserting his claims against PG&E on these
8 issues, nor PG&E's defenses.

9 MS. DODGE: Your Honor, would the --

10 THE COURT: And I also -- but I previously, at the
11 last hearing, I -- you can amend your claims, right?

12 MR. LAPPING: Well, we wanted to amend both the
13 refrigerator claim and the one involving the concrete patio and
14 such.

15 THE COURT: Right. But my ruling was to allow you to
16 amend them, so you should amend the claim on the refrigeration,
17 and that will be at issue in this court. Now, if he goes off
18 and sues the refrigerator company tomorrow in superior court,
19 the standby --

20 MR. LAPPING: Your Honor, I will upload an order on
21 the refrigerator claim, on the amendment.

22 THE COURT: So let's review the bidding for Ms. Dodge
23 and Ms. Kim.

24 I have given Mr. Lapping until April 20th to scream if
25 he believes that somehow I shouldn't be issuing an order that

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1 abstains on the prosecution of Mr. Greenberg's two claims, the
2 number which we're calling the tree and the driveway, and just
3 putting the matter on hold so the state court can adjudicate
4 the rights of the party. If somehow the state court doesn't
5 adjudicate it, Mr. Greenberg has a right to prosecute his
6 claims, those two claims, in this court.

7 I look to you all to draft it in a way so it's clear,
8 and most of all, clear to the superior court judge to
9 adjudicate the issues presented without regard to PG&E's
10 bankruptcy. Put in layman's terms, there is no stay
11 implication by virtue of the petition, the confirmation of the
12 order, et cetera, et cetera.

13 Separately, I'll issue an order that allows Mr.
14 Greenberg to amend his refrigerator claim, consistent with what
15 we talked about before.

16 And I'll now discuss with Ms. Dodge and Mr. Lapping
17 when we're going to have that trial.

18 Okay? We all clear?

19 MR. LAPPING: Yes, Your Honor.

20 MS. KIM: Yes, Your Honor. Just to make sure, we'll,
21 on the PG&E side, draft up the proposed order on the permissive
22 abstention, basically, on the two claims and share it with Mr.
23 Lapping for review. And I'd ask that we have the opportunity
24 to see the proposed order on the amendment to the refrigerator
25 claim from Mr. Lapping before he uploads that as well.

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1 THE COURT: Sure. Then Ms. Kim, let Mr. Lapping talk
2 to his clients, and if he --

3 MS. KIM: Of course.

4 THE COURT: -- gets back to you in the next week and
5 says okay, we'll go with what that crazy Judge Montali said,
6 then draft the order accordingly. And if he says no, we want
7 to be heard, then obviously we'll have to defer.

8 Okay. Ms. Dodge, let's get back to you. When do you
9 want to -- what should we -- what do you want me to do to
10 defend the stinking refrigerator claim -- the stinky stuff in
11 the refrigerator?

12 MS. DODGE: I think, as I said, we have the date set
13 right now for June 27th to 28th, but I believe it would only
14 take a day or less than a day to try that.

15 THE COURT: Okay.

16 MS. DODGE: And we're prepared to go forward on June
17 27th if Mr. Lapping is agreeable to that, because the only
18 difference in the amendment of that particular claim was an
19 increase in the amount of rent that he's --

20 THE COURT: Right. That's right.

21 MS. DODGE: And there was no substantive amendment
22 with regard to the basis of the claim or new theories of
23 liability.

24 THE COURT: Okay. Mr. Lapping, are you ready to go on
25 the refrigeration claim?

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1 MR. LAPPING: Yes, Your Honor.

2 THE COURT: Okay. So go ahead and upload the order
3 that authorized you to amend that claim, consistent with what
4 we said before. And I've already issued a trial scheduling
5 order, right?

6 MR. LAPPING: Yes.

7 THE COURT: And if you don't settle this case, we'll
8 see you on June 27th on the --

9 MS. KIM: Your Honor, I just --

10 MR. LAPPING: I will share the order with counsel for
11 PG&E before I upload it.

12 THE COURT: Okay.

13 MS. KIM: Thank you.

14 MS. DODGE: I have another question. We don't need to
15 amend the current scheduling order to specify that it only is
16 with regard to the refrigerator claim, or should we wait on
17 that and just assume that it is in play for that claim at this
18 time?

19 THE COURT: No, it's just the refrigerator. I mean, I
20 don't -- so we've had this colloquy on the record, and I didn't
21 go back and review my order. But let me put it this way. If
22 Mr. Lapping shows up with the tree experts and the (audio
23 interference) experts, he's going to be sent back.

24 MS. DODGE: Okay. Thank you.

25 THE COURT: Okay. Ms. Kim, you had a question?

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1 MS. KIM: Oh, I was just going to note that, of
2 course, this all, sort of, the scheduling order and the
3 refrigerator claim, as Your Honor's comments just made clear,
4 are all under the assumption that we're actually not going to
5 have the tree claim in front of you and that we're going to be
6 able to upload an order having you -- you have seen, of course,
7 if it turns out that that ends up being something that we have
8 to fight about in front of Your Honor, then we're, sort of --
9 that was actually -- that was the genesis of us trying to put a
10 hold on the scheduling order, because we didn't know whether
11 the tree claim, the other claim, were going to be here or in
12 the state court.

13 THE COURT: Well, I think you can rest assured, unless
14 Mr. Lapping comes up with some magic white rabbit out of the
15 hat -- what metaphor you want -- that the two non-refrigeration
16 claims by Mr. Greenberg are just going to go. If I can pick a
17 metaphor, they're on the back burner or on top of the back --
18 behind the refrigerator . And I'm going to be issuing an order
19 consistent with our comments that has that dispute played out
20 in the superior court?

21 And if, for some reason, the superior court refuses to
22 adjudicate what we'll call the Greenberg versus PG&E aspects of
23 the case, then this court is still available to adjudicate Mr.
24 Greenberg's claims on those two disputes, okay? I hope that's
25 clear.

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1 MS. KIM: Yes. Thank you, Your Honor.

2 MR. LAPPING: Yes. Your Honor.

3 THE COURT: Okay.

4 MS. KIM: Yes, Your Honor.

5 THE COURT: Thank you for your time.

6 And Mr. Lapping, there's no rule that says you can't
7 settle the refrigeration claim before June 27th.

8 MR. LAPPING: Thank you, Your Honor. We'll think
9 about that. Definitely.

10 THE COURT: Okay. Thank you all for your time.

11 MS. KIM: Thank you.

12 MR. LAPPING: Thank you, Your Honor.

13 MS. KIM: Thank you.

14 THE COURT: Bye.

15 (Whereupon these proceedings were concluded at 10:49 AM)

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana Copperman

/s/ HANA COPPERMAN, CET-487

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